IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.2345 of 2005
In
Second Appeal St.No.28515 of 2005

Shri Gajanan Balkrishna Kane — Appellant
Vs.
Ramchandra Gopal Chavan
since deceased through LRs:
(a) Indirabai Ramchandra Chavan
and ors. — Respondents

Ms.Seema Sarnaik for applicant.
Mr.S.N.Chandrachud for Resp.nOs.1B and 4.
Mr.S.M.Kazi for Resp.nos. 1A, 1C to 1H and 2.
Mr.Sachin Punde for resp.nos.7A to 7F.

CORAM: B.H.MARLAPALLE, J.

June 27, 2007.

P.C.

. Second Appeal under Stamp No.28515 of 2005 has been filed beyond time by 425 days and hence this application for condonation of delay.

. Heard the learned counsel for the applicant, Mr. Chandrachud the learned counsel for respondent nos.1B and 4, Mr.Kazi, the learned counsel for respondent Nos.1A, 1C to 1H and the respondent no.2. Mr.Punde appears for the Respondent no.7A to 7F. The respondent no.4 has filed affidavit-in-reply and has opposed this application for condonation of delay.

. Regular Civil Appeal No.92 of 2001 was decided by the learned District Judge at Ratnagiri on 7/10/2004 and certified copies of the said order were received by the applicant on 27/10/2004. The second appeal has been filed in December 2005. The applicant states that he is of the age of 76 years and does not keep good health. He suffered from bronchitis attack and was under treatment in January and February 2005. He was operated for prostrate on 11/2/2005 and was advised rest for two months. On account of the post operative treatment he could not affirm the affidavit. He states that till about end of November 2005 he was under treatment on and off.

. Per contra Mr.Chandrachud pointed out that the suit was dismissed in 1988 and it was restored after about seven years and finally it was dismissed on merits on 4/9/2001 (RCS No.19 of 1981). As per Mr. Chandrachud both the Courts below have concurrently recorded findings against the applicant.

. Be that as it may, having regards to the advanced age of the applicant and his failing health, the delay of 425 days caused in filing the second

appeal deserves to be condoned but by levying costs. Hence the application is allowed and the delay is condoned subject to payment of costs of Rs.3000/-. The cost amount shall be remitted with the Maharashtra State Legal Services Authority within a period of two weeks from today.

. List the appeal for admission on 23rd July 2007.

(B.H.MARL